



IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1978

\_\_\_\_\_  
**No. 77-1813**  
\_\_\_\_\_

**HANS BAUSSUS VON LUETZOW, *Petitioner,***

**v.**

**CLIFFORD ALEXANDER, SECRETARY OF THE ARMY, ET AL.**

\_\_\_\_\_  
**On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Fourth Circuit**  
\_\_\_\_\_

**REPLY BRIEF TO MEMORANDUM FOR THE  
RESPONDENTS IN OPPOSITION**  
\_\_\_\_\_

**DR. HANS BAUSSUS VON LUETZOW**  
*Petitioner pro se*

**Mailing Address:**  
**8021 Garlot Drive**  
**Annandale, VA 22003**

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

---

No. 77-1813

---

HANS BAUSSUS VON LUETZOW, *Petitioner,*

v.

CLIFFORD ALEXANDER, SECRETARY OF THE ARMY, ET AL.

---

On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Fourth Circuit

---

**REPLY BRIEF TO MEMORANDUM FOR THE  
RESPONDENTS IN OPPOSITION**

---

**Petitioner Asserts Right to Jury Trial as to Colonel Wagner's  
Inspector General Testimony**

Petitioner asserts the right to jury trial as to alleged perjurious and malicious, prima facie defamatory statements by Colonel Wagner in his Inspector General testimony (Pet. 3, paragr. 1). Petitioner's claim in this respect is, therefore, not an action against the United States in the context of 28 U.S.C. 2402 or *McElrath v. United States*, 102 U.S. 426.

**Petitioner's Reasons for Allowance of Writ Involve Questions of Law and Obvious and Exceptional Showing of Error**

1. Petitioner's entitlement to priority consideration for promotion (Pet. 12) is fortified by the respective findings of the lower court and of the appeals court:

"The Court further finds that when Col. Wagner assumed command of ETL, the supergrade combined position of Director, Research Institute and Scientific Advisor was held by Dr. Desmond C. O'Connor—Therefore he was not responsible for his appointment as such." (Pet. App. 5a).

"While appellant points to documentary evidence consistent with the pre-selection of Dr. O'Connor, we cannot say that the district court's finding in this regard is clearly erroneous. Rule 52(a), F.R. Civ. P." (Pet. App. 9a, paragr. 2).

Accordingly, the lower court made no direct finding as to Dr. O'Connor's preselective appointment and failed to hold the Secretary of the Army responsible herefore and for petitioner's correlated prior nonconsideration, while the appeals court acknowledged preselection of Dr. O'Connor. Prior nonconsideration of petitioner as a qualified candidate was a sufficient reason for priority consideration, and petitioner's right hereto was enhanced by Dr. O'Connor's preselection (Pet. 6-7, number 10).

2. The appeals court's invalidation of a significant regulatory provision (Pet. 13) reduces merit promotion to a fully discretionary action incomplete with due process and the equal protection of the laws under the Federal Constitution.

3. Colonel Wagner's pronounced preference for outside candidates and his demonstrated unwillingness to promote available GS-15 candidates, including peti-

tioner as ETL's only fully qualified candidate (Pet. 10, 13), was neither addressed by the lower court nor by the appeals court. Petitioner contends that Colonel Wagner violated in this respect also the constitutional provisions of due process and the equal protection of the laws.

It is therefore respectfully submitted that the petition for a writ of certiorari \* should be granted.

DR. HANS BAUSSUS VON LUETZOW  
*Petitioner pro se*

\* Corrigenda to the petition are the following:  
"March 28, 1977" on page 2 (middle) should read "March 28, 1978"; "does shift" on page 5 (number 5) should read "does not shift."